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**UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS**

No. 15-2817

RICHARD E. MCGINNIS, APPELLANT,

V.

ROBERT A. McDONALD,  
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before GREENBERG, *Judge*.

**MEMORANDUM DECISION**

*Note: Pursuant to U.S. Vet. App. R. 30(a),  
this action may not be cited as precedent.*

GREENBERG, *Judge*: The appellant, Richard E. McGinnis, appeals through counsel a May 4, 2015, Board of Veterans' Appeals (Board) decision that denied benefits based on service connection for Parkinson's disease. Record (R.) at 4-17. The appellant argues that the Board clearly erred in not affording the appellant a VA medical examination to determine whether he suffers from Parkinson's disease. Appellant's Brief at 4-7. For the following reasons, the Court will vacate the May 2015 Board decision and remand the matter for readjudication.

Justice Alito noted in *Henderson v. Shinseki* that our Court's scope of review in this appeal is "similar to that of an Article III court reviewing agency action under the Administrative Procedure Act, 5 U.S.C. § 706." 562 U.S. 428, 432 n.2 (2011); *see* 38 U.S.C. § 7261. The creation of a special court solely for veterans, and other specified relations such as their widows, is consistent with congressional intent as old as the Republic. *See Hayburn's Case*, 2 U.S. (2 Dall.) 409, 410 n., 1 L. Ed. 436 (1792) ("[T]he objects of this act are exceedingly benevolent, and do real honor to the humanity and justice of Congress."). "The Court may hear cases by judges sitting alone or in panels, as determined pursuant to procedures established by the Court." 38 U.S.C. § 7254. Accordingly, the statutory command of Congress that a single judge may issue a binding decision, pursuant to procedures established by the Court, is "unambiguous, unequivocal, and unlimited." *Conroy v.*

*Aniskoff*, 507 U.S. 511, 514 (1993); *see generally Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990).

The appellant is a Vietnam War veteran who served honorably in the U.S. Army from January 1964 to December 1966 and from June 1969 until June 1972. R. at 705-06. The appellant qualified as an M-16 expert, an M-14 marksman, and served as a clerk. R. at 705-06. The appellant received an Army Commendation Medal and the Vietnam Service Medal, as well as the Vietnam Campaign Medal. R. at 705-06.

In April 2002, the appellant sustained a bi-pelvic fracture when he was hit by a car while he was riding a bicycle. R. at 571, 579-80. In 2006, the appellant began to experience pain and a pulling sensation in his neck, as well as intermittent head tremors. R. at 571. In November 2011, the appellant was diagnosed with cervical dystonia with dystonic tremors. R. at 575. Subsequent treatment records note the same diagnosis. *See* R. at 24-26, 44-47, 50-53, 73-75, 79-81, 93-96, 528-31, 532-35, 543-46, 564-67.

In April 2011, the appellant filed for benefits based on service connection for Parkinson's disease. R. at 986-93; *see* 38 C.F.R. § 3.307 (2016). In February 2012, the regional office (RO) denied service connection for Parkinson's disease because it found that the appellant did not have this condition. R. at 828-32. In May 2015, Board denied the appellant's claim because it found that the appellant did not suffer from Parkinson's disease. R. at 3. The Board also remanded the issue of benefits based service connection for cervical dystonia to the RO for a VA medical opinion. R. at 18-20. However, the Board determined a medical examination for Parkinson's was not needed because it found the VA examinations provided were adequate under the law. R. at 8.

The Court concludes that the Board erred in failing to remand the appellant's Parkinson's claim with the matter of cervical dystonia with dystonic tremors as inextricably intertwined. *See Harris v. Derwinski*, 1 Vet.App. 180, 183 (1991)(holding that where a decision on one issue may have a "significant impact" on another, the two claims are inextricably intertwined), *overruled on other grounds by Tyrues v. Shinseki*, 23 Vet.App 166 (2009)(en banc), *aff'd*, 631 F.3d 1380, 1383 (Fed. Cir. 2011), *vacated and remanded for reconsideration*, 132 S. Ct. 75 (2011), *modified*, 26 Vet.App. 31 (2012). In the remand portion of the May 2015 decision, the Board ordered an examination to ascertain the nature and etiology of the cervical dystonia. R. at 19. Because an examination regarding the nature and etiology of the appellant's cervical dystonia may lead to

evidence of the appellant having Parkinson's disease, the Court concludes that the adjudication of the remanded cervical dystonia claim may affect significantly the claim currently on appeal. *See Harris, supra*. After all, the Board found that "[w]hile [neither] the Veteran, nor the Board, is competent to speak to the etiology or relation between [Parkinson's and cervical dystonia], the Board nonetheless finds that such an assertion passes the low threshold . . . to require the VA to request a clarifying medical opinion." R. at 18. Remand is required for further development of the cervical dystonia claim.

On remand, the appellant may present, and the Board must consider, any additional evidence and arguments. *See Kay v. Principi*, 16 Vet.App. 529, 534 (2002). This matter is to be provided expeditious treatment on remand. *See* 38 U.S.C. § 7112; *see also* Hayburn's Case, 2. U.S. (2 Dall.) 409, 410, n., 1 L. Ed. 436 (1792) ("[M]any unfortunate and meritorious [veterans], whom Congress have justly thought proper objects of immediate relief, may suffer great distress, even by short delay, and may be utterly ruined, by a long one.").

Based on the foregoing reasons, the May 4, 2015, Board decision on appeal is VACATED and the matter is REMANDED for further development.

DATED: November 30, 2016

Copies to:

Patrick A. Berkshire, Esq.

VA General Counsel (027)